

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-003-13-1-4-00162-16
45-003-14-1-5-01149-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-428-027.000-003
Assessment Years: 2013 and 2014

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2014 assessments of his property located at 2540 Chase Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant lot at \$4,600 for 2013 and \$4,500 for 2014.
2. Nowacki filed Form 131 petitions with the Board for both years and elected to proceed under our small claims procedures. On August 6, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Robert Metz and Gordona Bauhan, his Hearing Officers. They were all sworn as witnesses.

RECORD

4. The official record contains the following:

Petitioner’s Exhibit 1: Property Record Card for 2014-2018

5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.¹

¹ The Assessor offered no exhibits.

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
7. Here, there was no change in the property's assessment from 2012 to 2013. Nowacki therefore bears the burden of proof for 2013. The burden for 2014 depends on our determination for 2013.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. Nowacki purchased the property in 2009. While the lot is a buildable size, it is located in one of the most blighted portions of the city and there is no market interest for development. *Nowacki testimony*.
 - b. To create value in the city, assessments have to be correct and in line with what the market can bear. Property that is over-assessed and over-taxed puts substantial pressure on market value, which is supposed to be the basis for assessment. *Nowacki testimony*.
 - c. Nowacki thinks a reasonable value for the property is \$2,100, which is nearly 10 times more than what he paid for it. He further noted that the assessed values for this property have remained essentially unchanged from 2008 to 2018, which is somewhat unusual when compared to other properties he owns. Generally, these properties have reflected a downward trend over time. *Nowacki testimony; Petr's Ex. 1*.
9. The Assessor's case:
 - a. The Assessor contends that Nowacki provided no substantial evidence to support his requested valuations for 2013 or 2014, and he recommends no change to the assessments. *Metz testimony*.

ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the property's 2013 or 2014 assessments. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY

- ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013 and 2014, the valuation dates were March 1, 2013 and March 1, 2014, respectively. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the property’s 2013 assessment should be \$2,100, but he failed to present any probative market-based evidence to support that value. Nowacki did offer some general statements about the blighted condition of the area surrounding the property and asserted that there is no market interest for development, but statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. We also give no weight to his claims regarding the relative stability of the property’s assessment from 2008 to 2018. The Assessor’s decision to increase, decrease, or leave the property’s assessment unchanged in any given year does not prove that its 2013 assessment was incorrect. As the Tax Court has explained, “each tax year—and each appeal process—stands alone.” *Fisher v. Carroll Cnty. Ass’r*, 74 N.E. 3d 582 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year, therefore, has little bearing on its true tax value in another. *See, e.g., Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm’rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).
- e. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use for 2013, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial

evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

- f. Because Nowacki failed to make a prima facie case for reducing the property's 2013 assessment, there was no change in the assessment from 2013 to 2014. Nowacki therefore retains the burden of proof for 2014. Nowacki relied on the same evidence and arguments for 2014, and we therefore reach the same conclusion—he failed to make a prima facie case for a lower assessment.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2013 and 2014 assessments.

ISSUED: November 5, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.